

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Administration of the North American Numbering Plan)	CC Docket No. 99-200
)	
Millicorp Petition for Limited Waiver of Section 52.15 (g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources)	
)	
SmartEdgeNet, LLC Petition for Limited Waiver Of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources)	
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**REPLY COMMENTS OF MILLICORP IN SUPPORT OF
THE MILLICORP PETITION FOR LIMITED WAIVER**

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EXECUTIVE SUMMARY

Millicorp's Petition for Limited Waiver ("Millicorp Petition") should be granted promptly. The Millicorp Petition requests a limited waiver of Section 52.15(g)(2)(i) of the Commission's rules to allow Millicorp to obtain numbering resources directly from the North American Numbering Plan ("NANP") Administrator and/or the Pooling Administrator ("PA") in a manner comparable to the waiver granted to SBC Internet Services, Inc. ("SBCIS") in the *SBCIS Order*. The public interest and Commission precedent support prompt Commission grant of the Millicorp Petition and commenters have made no arguments that undermine this conclusion.

The Commission clearly has authority to grant the waiver requested in the Millicorp Petition rather than acting through a rulemaking. Millicorp has demonstrated good cause for grant of the Millicorp Petition—such grant will provide significant public interest benefits; strict compliance with the Section 52.15(g)(2)(i) causes public interest harms; and grant of the Millicorp Petition will not undermine or otherwise adversely impact the Commission's numbering regulatory framework, as demonstrated by direct Commission precedent. Specifically, the Commission made an unequivocal determination in the *SBCIS Order* that grant of a waiver of Section 52.15(g)(2)(i) to *all* providers of IP-enabled services is supported by the public interest.

As with the Commission's grant of a waiver to SBCIS in the *SBCIS Order*, grant of the Millicorp Petition will result in several significant public interest benefits, none of which are seriously challenged by commenters opposing the requested waiver. First, direct access to numbering resources will save Millicorp substantial sums, which can be passed through to Millicorp's customers through lower costs. Second, direct access to numbering resources will

provide companies like Millicorp with the flexibility to develop and deploy innovative IP-enabled services that compete on price and functionality both with CLECs and traditional interconnected VoIP providers. Third, direct access to numbering resources by providers of IP-enabled services is an important step towards the Commission's goal of migrating from the legacy PSTN to an all-IP network.

Moreover, Commission grant of the Millicorp Petition on an interim basis does not prevent or prejudice the ability of the Commission to initiate a rulemaking in the future to establish industry-wide rules regarding access to numbering resources by IP-enabled service providers. By acting on the waiver request in the short term, the Commission can enable Millicorp to benefit from significant cost savings and operational flexibility without impacting the Commission's flexibility to ultimately adopt appropriate rules of general applicability. If, instead, the Commission initiates a rulemaking as requested by certain commenters and further delays action on Millicorp's waiver request until the culmination of the rulemaking, Millicorp will continue to be beholden, potentially for years, to certificated carriers for numbering resources.

In addition, Millicorp's agreement to abide by all proposed conditions ensures that grant of the Millicorp Petition will not result in any public interest harms. Specifically, Millicorp has agreed to comply with the conditions imposed in the *SBCIS Order* to protect against number exhaust, and does not object to Commission grant of the Petition being conditioned on Millicorp's compliance with requirements already established by, and reasonable requirements proposed by, state public utility commissions. Further, Millicorp has agreed to comply with additional conditions to ensure efficient number utilization, facilitate IP interconnection, and enable Commission oversight. Also, Millicorp will comply with any facilities-readiness

requirement ultimately imposed by the Commission. When considered in the aggregate, the list of conditions with which Millicorp is willing to comply to secure grant of the Millicorp Petition is exhaustive, and these combined conditions represent a comprehensive program of Commission and PUC regulatory oversight.

For the foregoing reasons, Millicorp reiterates its request for prompt grant of the Millicorp Petition.

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**REPLY COMMENTS OF MILLICORP IN SUPPORT OF
MILLICORP'S PETITION FOR LIMITED WAIVER**

I. INTRODUCTION

Millicorp submits these reply comments to the Federal Communications Commission (“Commission”) in response to comments filed on May 8, 2012, in the above-referenced docket regarding Millicorp’s Petition for Limited Waiver (“Millicorp Petition”).¹ The Millicorp Petition requests a limited waiver of Section 52.15(g)(2)(i) of the Commission’s rules to allow Millicorp to obtain numbering resources directly from the North American Numbering Plan (“NANP”) Administrator and/or the Pooling Administrator (“PA”) in a manner comparable to the waiver

¹ Millicorp, *Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission’s Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200 (filed Mar. 14, 2012) (“Millicorp Petition”); *see also Wireline Competition Bureau Seeks Comment on SmartEdgeNet, LLC And Millicorp, LLC Petitions for Limited Waiver of the Commission’s Rules Regarding Access to Telephone Numbers*, Public Notice, CC Docket No. 99-200, DA 12-633 (WCB rel. Apr. 24, 2012) (“Public Notice”).

granted to SBC Internet Services, Inc. (“SBCIS”) in the *SBCIS Order*.² As further set forth herein, the public interest and Commission precedent support prompt Commission grant of the Millicorp Petition and commenters have made no arguments that undermine this conclusion.

In fact, only two comments were filed objecting to the Commission granting the Millicorp Petition. One was filed jointly by Bandwidth.com, Inc. (“Bandwidth”) and Level 3 Communications, LLC (“Level 3”), along with their industry association, COMPTTEL. As further explained herein, Bandwidth and Level 3 are Millicorp’s primary suppliers of telephone numbers and therefore have a vested economic interest in the denial of the Millicorp Petition. The other comment was filed by Securus Technologies, Inc. (“Securus”), which is a competitor of one of Millicorp’s services that is attempting to use this proceeding improperly to gain leverage in an unrelated proceeding in which Securus and Millicorp are at odds.

II. THE COMMISSION HAS AUTHORITY TO GRANT THE MILLICORP PETITION AND DOING SO IS CONSISTENT WITH COMMISSION PRECEDENT AND THE PUBLIC INTEREST

A. THE COMMISSION HAS DISCRETION TO GRANT THE MILLICORP PETITION RATHER THAN ACTING BY RULEMAKING

Contrary to the assertions of certain commenters,³ the Commission clearly has authority to grant the waiver requested in the Millicorp Petition rather than acting through a rulemaking. As an initial matter, “the choice between rulemaking and adjudication lies in the first instance with the [agency’s] discretion.”⁴ An agency “must retain power to deal with the problems on a

² *Administration of the North American Numbering Plan*, Order, CC Docket No. 99-200, 20 FCC Rcd 2957 (2005) (“*SBCIS Order*”).

³ Comments of Bandwidth.Com Inc., Level 3 Communications, LLC, and COMPTTEL, CC Docket No. 99-200, at 5-7 (filed May 8, 2012) (“CLEC Comments”).

⁴ *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974); *see also SEC v. Chenery Corp.*, 332 U.S. 194, 202 (1947) (“[A]n administrative agency must be equipped to act either by general rule or by individual order.”); *Pfaff v. U.S. Dep’t of Housing and Urban Development*, 88 F.3d 739, 748 n.4 (9th Cir. 1996) (“Adjudication has distinct advantages over rulemaking when the

case-to-case basis if the administrative process is to be effective.”⁵ Accordingly, the Commission’s rules state that “any provision of the rules may be waived by the Commission . . . if good cause therefor is shown.”⁶ Thus, grant of a waiver is warranted if such grant would better serve the public interest than requiring strict rule compliance;⁷ “where particular facts would make strict compliance inconsistent with the public interest,”⁸ and if it will not undermine the policy objective of the underlying rule.⁹

Millicorp has demonstrated good cause for grant of the Millicorp Petition—such grant will provide significant public interest benefits as set forth in the Millicorp Petition and herein; strict compliance with the Section 52.15(g)(2)(i) causes public interest harms; and grant of the Millicorp Petition will not undermine or otherwise adversely impact the Commission’s numbering regulatory framework, as demonstrated by direct Commission precedent.

B. GRANT OF THE MILLICORP PETITION IS IN THE PUBLIC INTEREST

Grant of the Millicorp Petition will result in several significant public interest benefits, none of which are seriously challenged by commenters opposing the requested waiver. First, as set forth in more detail in the Millicorp Petition, direct access to numbering resources will save Millicorp substantial sums, which can be passed through to Millicorp’s customers through lower costs.¹⁰ Currently, IP-enabled service providers such as Millicorp must pay their competitors,

agency lacks sufficient experience with a particular problem to warrant ossifying a tentative judgment into a black letter rule . . .”).

⁵ *SEC v. Chenery Corp.*, 332 U.S. at 203.

⁶ *See* 47 C.F.R. § 1.3.

⁷ *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁸ *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁹ *Id.* at 1166-67.

¹⁰ Millicorp Petition at 3. Numbering resources are one of Millicorp’s most significant recurring expenses. *See also* Comments of Vonage Holdings Corp. (“Vonage”), CC Docket No. 99-200, at 6 (filed Jan. 25, 2012) (“Vonage Jan. 25 Comments”)

competitive local exchange carriers (“CLECs”), a premium to obtain telephone numbers. This provides the carriers with an unfair and unwarranted competitive advantage, which the CLECs have a strong financial incentive to seek to preserve. Not only are IP-enabled service providers reliant on their competitors for inputs that they require to compete with the CLECs, but the CLECs also directly profit from this reliance. Thus, it is not surprising that the two CLECs from whom Millicorp obtains the majority of its telephone numbers, Level 3 and Bandwidth, filed joint comments opposing the Millicorp Petition.¹¹

Second, direct access to numbering resources will provide companies like Millicorp with the flexibility to develop and deploy innovative IP-enabled services that compete on price and functionality both with CLECs and traditional interconnected VoIP providers. However, by requiring IP-enabled service providers to obtain telephone numbers from their CLEC competitors, the Commission inadvertently enables these carriers to adopt unnecessary and unwarranted policies to suppress such disruptive competition. For example, Level 3 and Bandwidth both have prevented Millicorp from purchasing a wholesale short messaging service (“SMS”) product offered by Neustar as part of a new end-user service that Millicorp is developing. Specifically, the CLECs have refused without explanation to provide a letter of authorization to Neustar to enable Millicorp to utilize Neustar’s SMS service with telephone numbers supplied to Millicorp by Level 3 and Bandwidth. Instead, both CLECs have required Millicorp to purchase a competing SMS product offered by the carriers. Thus, Level 3 and Bandwidth have attempted to extend their control of numbering resources to other services needed by Millicorp to introduce new innovative products and features to its customers.¹²

¹¹ *See generally* CLEC Comments.

¹² *See also* Vonage Jan. 25 Comments at 5.

Third, direct access to numbering resources by providers of IP-enabled services is an important step towards the Commission's goal of migrating from the legacy PSTN to an all-IP network. As long as IP-enabled service providers are required to obtain telephone numbers from CLECs, the CLECs will continue to seek ways, through action or inaction, to require the providers' IP traffic to transit the PSTN, and thereby generate revenue for the CLECs, even when the traffic is destined for another IP-enabled service providers' network.¹³

C. *GRANT OF THE MILLICORP PETITION IS CONSISTENT WITH THE SBCIS ORDER*

Moreover, the Commission already made an unequivocal determination in the *SBCIS Order* that grant of a waiver of Section 52.15(g)(2)(i) to *all* providers of IP-enabled services is supported by the public interest.¹⁴ The Commission expressly stated in the *SBCIS Order* that “to the extent other entities seek similar relief we would grant such relief to an extent comparable to what we set forth in [the *SBCIS Order*].”¹⁵

The Commission cites a variety of public interest benefits to supports this position. According to the Commission,

Allowing SBCIS to directly obtain numbers from the NANPA and the PA, subject to the conditions imposed in this order, will help expedite the implementation of IP-enabled services that interconnect to the PSTN; and enable SBCIS to deploy innovative new services and encourage the rapid deployment of new technologies

¹³ See Vonage Jan. 25 Comments at 6-7.

¹⁴ The assertion by Level 3 and Bandwidth that the Wireline Competition Bureau (WCB) does not have delegated authority to act on the Millicorp Petition is simply wrong. See CLEC Comments 8-10. As noted by commenters, WCB does “not have authority to act on any applications or requests which present novel questions of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines.” 47 C.F.R. § 0.291. Despite the commenters protestations to the contrary, the Millicorp Petition does not present novel questions of fact, law, or policy. Grant of the requested waiver is well within the express precedent adopted by the Commission in its *SBCIS Order*. *SBCIS Order*, ¶¶ 4, 11; see also *infra* notes 20, 22.

¹⁵ *SBCIS Order*, ¶¶ 4, 11 (emphasis added).

and advanced services that benefit American consumers. Both of these results are in the public interest.¹⁶

Moreover, the Commission further stated in the *SBCIS Order*,

Additional public interest concerns are also served by granting this waiver. The Commission has recognized the importance of encouraging deployment of broadband infrastructure to the American people. The Commission has stated that the changes wrought by the rise of IP-enabled communications promise to be revolutionary. The Commission has further stated that IP-enabled services have increased economic productivity and growth, and it has recognized that VoIP, in particular, will encourage consumers to demand more broadband connections, which will foster the development of more IP-enabled services. Granting this waiver will spur the implementation of IP-enabled services and facilitate increased choices of services for American consumers.¹⁷

Thus, directly applicable Commission precedent could not have made more clear that the Commission's waiver of Section 52.15(g)(2)(i) at the request of IP-enabled service providers, such as this Millicorp Petition, is supported by the public interest and represents an appropriate exercise of Commission discretion to act by adjudication rather than rulemaking.

The Commission also expressly determined in the *SBCIS Order* that “*special circumstances exist* such that granting SBCIS's petition for waiver is in the public interest.”¹⁸ Specifically, the Commission appears to have considered it a special circumstance that, “to obtain NANP telephone numbers for assignment to its customers, SBCIS would have to purchase a retail product . . . , and then use this product to interconnect with the PSTN in order to send and receive certain types of traffic between its network and carrier networks.”¹⁹ This same

¹⁶ *SBCIS Order*, ¶ 4 (citations omitted); *see also id.*, ¶ 6 (“Granting SBCIS direct access to telephone numbers is in the public interest because it will facilitate SBCIS’ ability to efficiently interconnect to the PSTN, and thereby help to achieve the Commission’s goals of fostering innovation and speeding the delivery of advanced services to consumers.”) (citations omitted).

¹⁷ *Id.*, ¶ 6 (citations omitted).

¹⁸ *Id.*, ¶ 4 (emphasis added).

¹⁹ *Id.*, ¶ 5.

circumstance is applicable to Millicorp, which currently is required to purchase numbering resources from CLECs.²⁰

In any event, despite certain commenters' assertion to the contrary, the Commission's rules simply do not require a waiver petitioner to demonstrate that its situation is somehow unique.²¹ Further, it is disingenuous for commenters to argue that language in the *SBCIS Order* requires a waiver petitioner to demonstrate "special circumstances," while conveniently failing to acknowledge that the Commission determined in the same *SBCIS Order* that such special circumstances were present for SBCIS in a situation that is directly analogous to the instant situation.²² It is particularly odd for Level 3 and Bandwidth to be critical that Millicorp

²⁰ See Millicorp Petition at 3. Nevertheless, Level 3 and Bandwidth argue that Millicorp is not similarly situated to SBCIS because Millicorp is not affiliated with an incumbent carrier. According to the CLECs, this affiliation supported grant of the numbering waiver provided by the Commission in the *SBCIS Order* because it somehow enables the Commission or a state public utility commission ("PUC") to hold AT&T responsible for malfeasance by SBCIS. CLEC Comments at 4 n.6. (SBCIS was an affiliate of SBC, which is a predecessor-in-interest to AT&T.) However, in the *SBCIS Order*, the Commission takes exactly the opposite tack. According to the Commission, "[W]e are mindful that concerns have been raised with respect to whether enabling SBCIS to connect to an affiliate, will disadvantage unaffiliated providers of IP-enabled voice services." *SBCIS Order*, ¶ 7. Thus, the Commission suggests in the *SBCIS Order* that SBCIS' affiliation with an incumbent carrier was a negative factor requiring special oversight by the Commission—oversight that would not have been warranted in the absence of such affiliation. Further, the affiliate of an incumbent such as SBCIS presumably has far more negotiating leverage when purchasing numbering resources from carriers (including its incumbent affiliate) than an innovative startup such as Millicorp that hopes to disruptively compete with incumbent carriers using new technologies.

²¹ See *supra* Section II(A); see also 47 C.F.R. § 1.3; see also Vonage Jan. 25 Comments at 8-9.

²² See CLEC Comments at 2-5, Securus Comments at 1-4. Millicorp, in fact, is similarly situated to SBCIS. In its waiver request, SBCIS asserted that (i) it "intends to use the numbering resources to deploy IP-enabled services, including VoIP services, on a commercial basis to residential and business customers;" (ii) its waiver should remain in effect "until [the Commission] adopt[s] final numbering rules...;" (iii) the requested waiver "will allow [SBCIS] to deploy innovative new services using a more efficient means of interconnection between IP networks and the [PSTN];" and (iv) "granting the waiver will not prejudice the Commission's ability to craft rules [in a separate rulemaking] proceeding." *SBCIS Order*, ¶ 2. Millicorp made each of these same assertions in the Millicorp Petition. See generally Millicorp Petition.

“candidly admit[s] that any VoIP provider who requests a waiver from the Commission’s rules should be granted one” given that the Commission states exactly that in the *SBCIS Order*.²³ Moreover, the *SBCIS Order* was issued nearly seven years ago and only a limited number of IP-enabled service providers have requested a numbering waiver since then, which substantially undermines Level 3 and Bandwidth’s assertion that grant of the Millicorp Petition would “effectively ... change the existing numbering rules by opening the floodgates to any waiver petitioner. . . .”²⁴

D. GRANT OF THE MILLICORP PETITION DOES NOT PREJUDICE THE COMMISSION’S ABILITY TO INITIATE A RULEMAKING IN THE FUTURE

Commission grant of the Millicorp Petition on an interim basis does not prevent or prejudice the ability of the Commission to initiate a rulemaking in the future to establish industry-wide rules regarding access to numbering resources by IP-enabled service providers. Millicorp expressly requested an interim waiver until such time as the Commission has adopted rules of general applicability,²⁵ and Millicorp will comply with any such rules that ultimately are adopted once they are adopted. As noted in the *SBCIS Order*, “[t]he Commission has previously granted waivers of the Commission rules pending the outcome of rulemaking proceedings, and for the reasons articulated above, it is in the public interest to do so here.”²⁶ In fact, the Commission expressly declined in the *SBCIS Order* to adopt commenters’ request that the

²³ See CLEC Comments at 3; *SBCIS Order*, ¶¶ 4, 11 (“[T]o the extent other entities seek similar relief we would grant such relief to an extent comparable to what we set forth in [the *SBCIS Order*].”).

²⁴ CLEC Comments at 5.

²⁵ Millicorp Petition at 2, 7.

²⁶ *SBCIS Order*, ¶ 11; see also Millicorp Petition at 7 & n.19.

Commission “defer consideration of SBCIS’s waiver until final numbering rules are adopted” by the Commission.²⁷

The Commission has been considering this issue in various proceedings since 2004 and has not yet acted on the matter.²⁸ In the interim, Millicorp and similarly situated IP-enabled service providers have sought waivers consistent with the Commission’s express guidance in the *SBCIS Order* (“Petitioners”).²⁹ By acting on the Petitioners’ waiver requests in the short term, the Commission can enable the Petitioners to benefit from significant cost savings and operational flexibility without impacting the Commission’s flexibility to ultimately adopt appropriate rules of general applicability. If, instead, the Commission initiates a rulemaking as requested by certain commenters and further delays action on the Petitioners’ waiver requests until the culmination of the rulemaking, the Petitioners will continue to be beholden, potentially for years, to certificated carriers for numbering resources. As a result, the Petitioners will be unable to pass through to their customers the cost-savings that grant of the Petitioners’ waiver requests will facilitate and the Petitioners will be required to continue to attempt to negotiate with CLECs—the Petitioners’ direct competitors—reasonable terms for access to numbering resources.

²⁷ *SBCIS Order*, ¶ 11.

²⁸ See *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, 19 FCC Rcd 4863 (2004); see also *Wireline Competition Bureau Seeks to Refresh Record on Petitions for Waiver of the Commission’s Rules Regarding Access to Numbering Resources*, Public Notice, CC Docket No. 99-200, 26 FCC Rcd 17039 (WCB 2011) (“2011 Public Notice”).

²⁹ See *supra* Section II(B); see also 2011 Public Notice, n.1 for a list of other IP-enabled service providers that have filed waiver requests pursuant to the *SBCIS Order*.

III. MILLICORP'S AGREEMENT TO ABIDE BY ALL PROPOSED CONDITIONS ENSURES THAT GRANT OF THE MILLICORP PETITION WILL NOT RESULT IN ANY PUBLIC INTEREST HARMS

The concerns expressed by commenters to support their request for the Commission to act here by rulemaking either already adequately have been addressed by the Commission through conditions imposed in the *SBCIS Order* or are fully mitigated by other proposed conditions on the grant of the Millicorp Petition. Millicorp does not object to these conditions to the extent that the Commission finds them to be necessary to protect its numbering system.

A. GRANT OF THE MILLICORP PETITION WILL HAVE NO MATERIAL IMPACT ON THE DISTANT PROBLEM OF NUMBER EXHAUST

Level 3 and Bandwidth argued that grant of the waiver will aggravate number exhaust.³⁰ As an initial matter, number exhaust is not a realistic scenario in the short term. For example, the California Public Utility Commission and the People of the State of California (jointly “California”) assert that number exhaustion will not occur until “some time [sic] beyond 2042.”³¹ This provides the Commission with more than enough time to develop a new industry-wide approach to the utilization of numbering resources through a generic rulemaking.³² Moreover, given this time frame, numbering resources assigned to Millicorp and the other Petitioners in the

³⁰ See, e.g., CLEC Comments at 12.

³¹ Comments of the California Public Utility Commission and the People of the State of California, CC Docket No. 99-200, at 7 (filed May 8, 2012) (“California Comments”).

³² California appears to argue that the direct assignment of numbering resources to IP-enabled service providers may be part of the solution to the distant number exhaust problem. According to California, “Since VoIP providers do not depend on the legacy geographic basis for number assignment, the CPUC sees the potential for allowing VoIP providers access to the NANP as an opportunity to not only eliminate a structure which makes number utilization inefficient, but also to lessen the impact of code assignment in areas where there are no likely end users for those codes.” California Comments at 7.

interim will not appreciably impact overall number utilization prior to the completion of such a rulemaking.

In any event, however, Millicorp has agreed to comply with conditions imposed in the *SBCIS Order* to protect against number exhaust.³³ More specifically:

- Millicorp will fully comply with all of the Commission’s numbering utilization and optimization requirements, including, but not limited to: (1) compliance with thousand-block number pooling requirements; (2) Number Resource Utilization/Forecast reporting requirements; (3) local number portability requirements; and (4) contribution to numbering administration costs.³⁴
- Millicorp also has agreed to comply with the any industry guidelines and practices specified by the Commission.³⁵

B. MILLICORP DOES NOT OBJECT TO THE IMPOSITION OF REASONABLE STATE PUC REQUIREMENTS

Millicorp does not object to Commission grant of the Millicorp Petition being conditioned on Millicorp’s compliance with requirements already established by, and reasonable requirements proposed by, state PUCs to which numbering authority has been delegated by the Commission.³⁶ These include the following:

³³ *SBCIS Order*, ¶ 9 (“Requiring SBCIS to comply with numbering requirements will help alleviate concerns with numbering exhaust.”).

³⁴ *See id.*; *see also generally* 47 C.F.R. Part 52.

³⁵ *See SBCIS Order*, ¶ 9.

³⁶ *See* Comments of the Pennsylvania Public Utility Commission, CC Docket No. 99-200, WC Docket Nos. 11-119, 01-92, at 7-8 (filed Oct. 6, 2011); Comments of the Public Service Commission of Wisconsin, CC Docket No. 99-200, at 1-2 (filed Jan. 25, 2012) (“Wisconsin Comments”); Comments of the Nebraska Public Service Commission, CC Docket No. 99-200, at 2 (filed Jan. 25, 2012) (“Nebraska Comments”); Comments of the California Public Utilities Commission and the People of the State of California, CC Docket No. 99-200, at 4 (filed Jan. 25, 2012) (“California January 25 Comments”).

- Provide the relevant state commission with both regulatory and numbering contacts (*e.g.*, name, telephone number, and e-mail address) at the time Millicorp first requests numbering resources in that state;³⁷
- To the extent feasible, consolidate and report all of its numbering resources under Millicorp’s unique Operating Company Number (“OCN”);³⁸
- Provide customers with the ability to access all N11 numbers in use in a state, provided the state notifies Millicorp of the N11 numbers in use in that state;
- Obtain numbering resources from pooling rate centers;³⁹
- Maintain the original rate center designation of all numbers in Millicorp’s inventory;⁴⁰
- Be subject to state designation of which rate centers are available to Millicorp, provided that the requirement (1) does not require Millicorp or its customers to relinquish existing numbers, (2) does not prevent customers from porting numbers to Millicorp from non-designated rate centers, and (3) is applied in a nondiscriminatory fashion to all VoIP providers;⁴¹ and
- Maintain 75% number utilization before obtaining growth numbering resources.⁴²

Further, as noted above, Millicorp has committed to complying with the FCC’s Part 52 numbering rules and the conditions imposed on SBCIS in the *SBCIS Order* as requested by certain PUCs.⁴³

³⁷ See Wisconsin Comments at 1-2; Nebraska Comments at 2.

³⁸ See *id.*

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See NARUC Request at 8; California Jan. 25 Comments at 8.

⁴² See California Jan. 25 Comments at 8.

Millicorp also wishes to specifically address the concerns that California expressed in its May 8 comments on the Millicorp Petition.⁴⁴ California proposes four changes to the Commission's rules to facilitate the direct assignment of telephone numbers to VoIP providers:

- That states be given the right to determine which rate centers are available to each VoIP service provider;
- That VoIP service providers be required to have a minimum of 76% utilization before obtaining additional numbering resources;
- That VoIP service providers be required to expand number porting beyond rate center boundaries; and
- That all calls to VoIP service providers be deemed local.⁴⁵

Again, Millicorp does not object to these principles and does not object to the Commission imposing them as conditions on grant of Millicorp's requested waiver. Accordingly, the concerns expressed in California's comments are fully mitigated and do not weigh in favor of delay in Commission action on the Millicorp Petition. To the contrary, with the imposition of its proposed conditions, California appears to support the direct assignment of number resources to VoIP providers. According to California,

The CPUC views the FCC's consideration of allowing VoIP providers direct access to numbers as an opportunity, at least in part, to eliminate a structure which, over time, has come to render number utilization today far less efficient than it was when the FCC adopted new numbering resources utilization (numbering) rules in 2000.⁴⁶

⁴³ See Wisconsin Comments at 1-2; Nebraska Comments at 2; Request for Rulemaking of National Association of Regulatory Utility Commissioners ("NARUC"), CC Docket No. 99-200, at 8 (filed Mar. 30, 2012) ("NARUC Request").

⁴⁴ See California Comments. No other state PUC filed comments in response to the Millicorp Petition.

⁴⁵ *Id.* at 3.

⁴⁶ California Comments at 2.

Further, Millicorp also will agree to the additional conditions volunteered by Vonage to ensure efficient number utilization, facilitate IP interconnection, and enable Commission oversight.⁴⁷ Specifically:

- Millicorp will return numbering resources if it falls below the utilization rate specified by the Commission in any grant of the Millicorp Petition;
- Millicorp will commit to offer IP interconnection to other carriers and providers; and
- Millicorp will provide the FCC with a migration plan and will comply with ongoing reporting requirements related to its transition to becoming a direct holder of numbering resources.

C. MILLICORP DOES NOT OBJECT TO APPROPRIATE “FACILITIES READINESS” CONDITIONS

The *SBCIS Order* also imposed on SBCIS a “facilities readiness” requirement set forth in section 52.15(g)(2)(ii).⁴⁸ Pursuant to the *Order*, SBCIS was permitted to demonstrate facilities-readiness in one of two ways: (i) SBCIS could provide a copy of an interconnection agreement; or (ii) SBCIS could provide evidence that “it has ordered an interconnection service pursuant to a tariff that is generally applicable to other providers of IP-enabled voice services....”⁴⁹ The Commission adopted the facilities-readiness requirement in part to safeguard competition so that SBCIS, as an affiliate of a certificated carrier, would not receive preferential treatment as

⁴⁷ Vonage Jan. 25 Comments at 7.

⁴⁸ *SBCIS Order*, ¶ 10.

⁴⁹ *Id.*

compared to other IP-enabled service providers.⁵⁰ This rationale is inapplicable to providers like Millicorp that are not affiliates of any carrier.

The facilities-readiness requirement also was intended to promote number resource optimization by ensuring that entities that receive numbering resources are in the position promptly to use such resources.⁵¹ To mitigate this concern, in addition to the commitments described above, Millicorp agreed in the Millicorp Petition to comply with any facilities-readiness requirement ultimately imposed by the Commission.⁵² Millicorp further proposes herein to submit to the NANPA or the PA⁵³ evidence that it has deployed equipment⁵⁴ and/or has entered into appropriate interconnection or other contractual arrangements with carriers to allow for the exchange of traffic between Millicorp's networks and the PSTN. In any event, upon receiving a direct assignment of numbering resources, Millicorp will be required to certify to the

⁵⁰ *See id.*

⁵¹ *See id.*

⁵² *See* Millicorp Petition at 6 & n.17 (discussing the uncertainty regarding how a facilities-readiness requirement will be applied to IP-enabled service providers that are not affiliated with carriers). Securus characterizes this commitment as “impossible to fulfill” and thus “meaningless” perhaps because the Commission has yet to provide specific guidance regarding how it might apply a facilities-readiness requirement in this context. Securus Comments at 4 & n. 7. To be clear, Millicorp's commitment is not meaningless and will not be “impossible to fulfill” provided that the Commission determines and specifies a facilities-readiness requirement applicable to Petitioners that is capable of being fulfilled, which presumably the Commission will do.

⁵³ To the extent that the Commission imposes such a Waiver condition, Millicorp has agreed to file requests for numbers with the Commission and the relevant state commission at least thirty days prior to requesting numbers from the NANPA or the PA. *See* Millicorp Petition at 6 n.18.

⁵⁴ Such evidence could take the form of an affidavit completed by a Millicorp employee that Millicorp: (1) owns or controls a softswitch; (2) that the softswitch is operational; and (3) that upon the receipt of numbering resources, Millicorp will be able to provide either VoIP services to its customers using such equipment within 60 days or requires numbering resources in order to provision E-911 services to its customers.

NANPA or the PA that the numbering resources are “in service” subsequent to receiving an assignment of numbering resources.

D. THE COMMISSION AND STATE PUCS WILL HAVE COMPREHENSIVE REGULATORY OVERSIGHT OF MILLICORP UNDER THE PROPOSED CONDITIONS

When considered in the aggregate, the list of conditions with which Millicorp is willing to comply to secure grant of the Millicorp Petition is exhaustive. The combined conditions represent a comprehensive program of Commission and PUC regulatory oversight. These conditions will ensure that Millicorp makes productive use of any directly assigned numbering resources and does not endanger or encumber PUC authority over numbering resources or otherwise harm the public interest. Moreover, the conditions completely undermine commenters’ assertion that the Commission and state PUCs will not have adequate oversight of Millicorp’s use of numbering resources merely because Millicorp is an IP-enabled service provider rather than a CLEC.⁵⁵

IV. THE SECURUS COMMENTS ARE WITHOUT MERIT

Securus’ comments primarily focus on a separate, unrelated proceeding in which Securus is seeking the Commission’s approval for the blocking of inmate calls to certain of Millicorp’s customers⁵⁶ As such, Securus’ comments are without merit and bear little relevance to this proceeding.

Nevertheless, Millicorp wishes to correct certain inaccurate assertions made by Securus in its comments. First, contrary to Securus’ strident assertions,⁵⁷ Millicorp does not claim that the particular service which aggrieves Securus, ConsCallHome.com, is always provided to

⁵⁵ See CLEC Comments at 7-8.

⁵⁶ The respective arguments of both Securus and Millicorp are set forth in the filings in that proceeding, Docket No. 09-144, and Millicorp will not attempt to repeat them here.

⁵⁷ Securus Comments at 3.

customers as an interconnected VoIP service, as such term is defined by the Commission.⁵⁸ In addition, it is only one of several commercial IP-enabled services that Millicorp offers.⁵⁹ Consistent with the description of the Millicorp Petition in the Commission’s Public Notice, Millicorp requests a limited waiver of the Commission’s numbering utilization rules to deploy “new and innovative *Internet Protocol enabled services*—including Voice over Internet Protocol service. . . .”⁶⁰ Like Skype, Google Talk and many other mainstream IP-enabled services, most of the VoIP services offered by Millicorp do not neatly fit into a regulatory category established by the Commission.⁶¹ Second, Securus asserts that “all Millicorp buys are numbers and VoIP routers” and suggests that Millicorp currently does not purchase interconnection to the PSTN.⁶² This is belied by the Millicorp Petition in which Millicorp expressly states that it purchases services from CLECs “to interconnect with the PSTN.”⁶³

V. CONCLUSION

For the reasons set forth herein, Millicorp reiterates its request for prompt Commission grant of the Millicorp Petition. A determination to address the Millicorp Petition and other Petitioners’ numbering waiver requests on an adjudicative, case-by-case basis rather than via a rulemaking is consistent with Commission precedent and supported by the public interest. Further, in light of the multitude of numbering-related requirements that Millicorp is willing to accept as conditions to the Commission’s grant of the Millicorp Petition (if the Commission

⁵⁸ See *Ex Parte* letter to Marlene H. Dortch, Secretary, Commission, from Phil Marchesiello, Wilkinson Barker Knauer, LLP, Counsel to Millicorp, WC Docket No. 09-144, at 19-20 (filed June 17, 2011) (“Millicorp June 17 Letter”).

⁵⁹ See Millicorp Petition at 1-2.

⁶⁰ Public Notice at 1 (emphasis added).

⁶¹ See Millicorp June 17 Letter at 20 n.52.

⁶² Securus Comments at 4 n. 7 (citations omitted).

⁶³ Millicorp Petition at 3.

determines such conditions to be necessary), grant of the Millicorp Petition provides no realistic likelihood of causing public harms.

Respectfully submitted,

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